

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.2.406 pertaining to licensee )  
assessments to administer the milk )  
inspection and milk diagnostic lab )  
functions of the department )

TO: All Concerned Persons

1. On June 3, 2016, the Department of Livestock published MAR Notice No. 32-16-275 regarding the proposed amendment of the above-stated rule at page 998 of the 2016 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rule as proposed.

3. The department has thoroughly considered the comment received. A summary of this comment and the department's response is as follows:

COMMENT 1: The Montana Department of Livestock (Milk Control Board) has passed significant inspection fee increases to dairies and other small processors to make up for a \$130,000 budget deficit that the department is predicting for the upcoming year. These increases would specifically affect small businesses licensed with the Milk and Egg Bureau. I believe that this fee increase should be examined more carefully and reconsidered as it will substantially and negatively impact small businesses throughout Montana.

Manufacturers suggest that a startup artisan cheese manufacturing company produces no more than 2,500 lbs. of milk/month in its first year. This is a stark contrast to the proposed 263,636 lbs. of milk/month that the Department of Livestock (Milk Control Board) is proposing as a minimum monthly inspection fee assessment. This will kill any artisan cheese manufacturing company startup in Montana. What will Montana lose? Let's not kill this new emerging industry in Montana through legislation.

The industry is way ahead of the government on this public safety issue. In the very rare event of a positive plate count, then there should be a follow up testing and inspection to help identify the source of contamination. Once a false positive is ruled out, then the product should be certified for sale, or if a true positive is confirmed, then the product should be condemned for human consumption. In the case of Vintage Cheese of Montana, the proposed changes for inspection fees would cost \$8,700 or over \$2.50/lb. (\$25 per cwt or hundred weight of milk) of cheese for two annual, 1/2 hour, inspections. With only a \$2.50/lb. of gross profit margin, the new proposal would lead to immediate bankruptcy. However, the annual cost to perform a standard plate count in the bonded private sector would only be \$435 per year at \$.10 per lb. of cheese. This is 97 percent cheaper, and would allow small startups to survive, and be 100 percent safer for the consuming public. Also, it

would eliminate the large bureaucratic costs of inspections (\$8,700 for two annual 1/2-hour inspections).

If the Department of Livestock (Milk Control Board) chooses to continue in the direction of the current proposal of increased inspection fees, then please consider charging the manufacturer, like the producer, on a milk volume basis - \$ per cwt of milk. During the initial startup, before full sales are realized, a new company could survive. As sales increase their ability to pay more will increase. This would ensure that Montana doesn't discriminate against the smaller manufacturers, stays competitive with other states, and will fiscally benefit in the future through taxes and job creation by supporting this new emerging industry.

If the Department of Livestock (Milk Control Board) chooses to continue in the direction of outrageous monthly fees, then please allow in the legislation, a grace period of six or more months (a typical cheese ripening time) for the selling of finished product inventory, liquidation of assets, and time to move operations to a state that supports the Artisanal Cheese Manufacturing Industry.

The logic and methodology behind the 263,636 lbs. of milk/month as a minimum assessment and 1,036,364 lbs. of milk/month as a maximum could be none other than to drive small manufacturers into bankruptcy, leaving the large manufacturers in complete control over volume and pricing, giving them a monopoly and complete market control in the state of Montana.

With the minimum and maximum assessments, the number of small dairies selling their herds to the larger dairies at distressed prices will increase, and the Department of Livestock's budget deficit will continue to increase, as well, into the future. The fewer the dairies; the fewer the fees. This proposal will have a disastrous cyclical pattern of failure for both the dairy industry and the Department of Livestock's budget deficit. The larger manufacturers that may survive these fees will have a large burden on their cleaning, sanitizing, and pest control budgets making more risk of a tainted product. There should be another option in the assessment revenue shortfall. The minimum and maximum assessments for plants should be removed or the minimum lowered to a reasonable volume of 2,500 lbs. of milk/month, the maximum increased to 2,100,000 lbs. of milk/month, and lean heavily on a \$/cwt basis.

The minimum of 81,818 lbs. of milk/month for dairies is way too high as well and speaks for itself, by adding up the number of small dairies that have had to sell their herds to larger dairies since the beginning of this outrageous minimum.

**RESPONSE:** The department thanks you for your comment. The Board of Livestock took in to consideration that the minimums initially proposed in the Montana Administrative Register, MAR Notice No. 32-15-268, Issue #21 - 11/12/15, would be detrimental to start ups and small dairy processors. As a result the Board of Livestock undertook two public work sessions with members of the industry to gain a better understanding of how these fees could potentially be barriers to business sustainability and market entry. In the new proposed amendment, MAR Notice No. 32-16-275, Issue #11, 6/3/16, the Board of Livestock addressed this concern by maintaining the minimum at \$50 per month and further lowering the per cwt fee from \$0.155 to \$0.14. For 64 of the department's licensees, this represents a reduction in the fees they currently pay the department, which will hopefully have a

positive impact on the industry and in the end, the consumer. The Board of Livestock will be able to accomplish this reduction through the appropriation of general fund money to offset the cost of the state's FDA certified lab as opposed to applying the full cost of this program to the fee structure charged to producers and processors.

While the statute, 81-23-202, MCA, does not directly address the use of minimums and maximums, the statute does require that the Board of Livestock establish a fee to pay for both the milk inspection and milk laboratory programs. Both of these programs are critical components for maintaining compliance with FDA standards and the ability to ship dairy products across state lines. The statute does not prohibit the use of minimums and maximums and it has been standard practice to use these tools through the fee established by rule. This practice is done to ensure that the fees are within the threshold of being commensurate with costs by capturing the minimum cost of the state providing these compliance programs for smaller operators and not overcharging large operators for this program simply because their volume of production is higher. Higher volume production or processing of dairy products has not proven to be a driver of higher costs incurred for the department.

#### DEPARTMENT OF LIVESTOCK

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